

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALFRED MCZEAL, JR., <i>et al.</i> ,	:	CIV. NO. 3:24-cv-01395
	:	
Plaintiffs,	:	(Magistrate Judge Schwab)
	:	
v.	:	
	:	
CIERRA RAY, <i>et al.</i> ,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATION

On August 19, 2024, the plaintiffs, Pedro Urban (“Urban”) and Alfred McZeal, Jr. (“McZeal”), initiated this action by filing a complaint pro se. *Doc. 1*. Along with the complaint, Urban filed an application to proceed *in forma pauperis* (*doc. 2*), but it was not completely filled out, and McZeal did not file an application to proceed *in forma pauperis*. *See docket generally*. Accordingly, on August 23, 2024, we ordered the plaintiffs to either pay the filing fee or each file a completed application to proceed *in forma pauperis* on or before September 20, 2024. *Doc. 5*. Neither plaintiff has filed a completed application to proceed *in forma pauperis*, nor has the fee been paid. *See docket generally*. And on September 10, 2024, the copy of our August 23, 2024 Order which we mailed to Urban returned to us. *Doc. 6*. We have not received an updated address from Urban. *See docket generally*.

Under 28 U.S.C. § 1915(a)(1), the court “may authorize the

commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor.” Under that section, if a litigant establishes that he or she is unable to pay the costs of the suit, the court may allow the litigant to proceed *in forma pauperis*. *In re Binsack*, 446 F. App’x 445, 447 (3d Cir. 2011). Although a litigant need not be “absolutely destitute” to qualify for *in forma pauperis* status, *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948), such “status is a privilege rather than a right.” *Shahin v. Sec’y of Delaware*, 12-4562, 2013 WL 4734392 (3d Cir. Sept. 4, 2013). “The decision to grant or deny an [*in forma pauperis*] application is based solely on the economic eligibility of the petitioner.” *In re Womack*, 450 F. App’x 159, 160 (3d Cir. 2011).

Here, we denied Urban’s application for leave to proceed *in forma pauperis* and instructed him and his co-plaintiff McZeal to pay the filing fee or both file completed applications to proceed *in forma pauperis*. *Doc. 5*. They did not do so. Accordingly, we recommend that the Court dismiss the complaint without prejudice and close the case.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge’s proposed findings, recommendations or report addressing a motion or matter described in

28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 8th day of October 2024.

S/Susan E. Schwab

Susan E. Schwab

United States Magistrate Judge